IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

JOSEPH RANDALL HOLCOMB §

VS. § CIVIL ACTION NO. 1:21-CV-302

DIRECTOR, TDCJ-CID §

ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Joseph Randall Holcomb, a prisoner confined at the Coffield Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends denying the petition.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration of all the pleadings and the relevant case law, the Court concludes that Petitioner's objections lack merit. Petitioner claims that the prosecutor committed misconduct by failing to call the forensic interviewer to testify. After the trial court determined that the forensic interviewer was not the proper outcry witness, the State chose not to call her as a witness. Defense counsel could have called her as a witness, but did not.

Because the State was not required to call the forensic interviewer to testify, Petitioner's claims of prosecutorial misconduct lack merit. Petitioner also claims that evidence of an extraneous, uncharged offense was admitted at trial. The record reflects that the State notified the trial court and defense counsel that the State had just discovered that morning that Petitioner's ex-wife alleged Petitioner had molested her daughter. [Dkt. 27-21 at 139.] This conversation was held outside the presence of the jury, and, contrary to Petitioner's assertion, no evidence of the extraneous conduct was introduced at trial. Therefore, this claim also lacks merit.

In addition, Petitioner is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires Petitioner to make a substantial showing of the denial of a federal constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000); Elizalde v. Dretke, 362 F.3d 323, 328 (5th Cir. 2004); see also Barefoot v. Estelle, 463 U.S. 880, 893 (1982). In making that substantial showing, Petitioner need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. See Slack, 529 U.S. at 483-84; Avila v. Quarterman, 560 F.3d 299, 304 (5th Cir. 2009). If the petition was denied on procedural grounds, Petitioner must show that jurists of reason would find it debatable: (1) whether the petition raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. Slack, 529 U.S. at 484;

Elizalde, 362 F.3d at 328. Any doubt regarding whether to grant a certificate of appealability is

resolved in favor of the petitioner, and the severity of the penalty may be considered in making this

determination. See Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir. 2000).

Here, Petitioner has not shown that any of the issues raised by his claims are subject to debate

among jurists of reason, or that a procedural ruling was incorrect. In addition, the questions

presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to

make a sufficient showing to merit the issuance of a certificate of appealability.

<u>ORDER</u>

Accordingly, Petitioner's objections [Dkt. 42] are OVERRULED. The findings of fact and

conclusions of law of the magistrate judge are correct, and the report of the magistrate judge

[Dkt. 41] is ADOPTED. A final judgment will be entered in this case in accordance with the

magistrate judge's recommendation. A certificate of appealability will not be issued.

SIGNED this 16th day of September, 2024.

Muhad J. Truncale

Michael J. Truncale

United States District Judge

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